



Entered on Docket  
July 25, 2007

Hon. Linda B. Riegle  
United States Bankruptcy Judge

STUTMAN, TREISTER & GLATT, P.C.  
FRANK A. MEROLA  
(CA State Bar No. 136934)  
EVE H. KARASIK  
(CA State Bar No. 155356)  
CHRISTINE M. PAJAK,  
(CA State Bar No. 217173), Members of  
1901 Avenue of the Stars, 12<sup>th</sup> Floor  
Los Angeles, California 90067  
Telephone: (310) 228-5600  
Facsimile: (310) 228-5788  
Email: [fmerola@stutman.com](mailto:fmerola@stutman.com)  
[ekarasik@stutman.com](mailto:ekarasik@stutman.com)  
[apahlen@stutman.com](mailto:apahlen@stutman.com)

Counsel for the Official Committee Of  
Equity Security Holders Of USA Capital First Trust Deed Fund, LLC

SHEA & CARLYON, LTD.  
JAMES PATRICK SHEA  
(Nevada State Bar No. 000405)  
CANDACE C. CARLYON  
(Nevada State Bar No. 002666)  
SHLOMO S. SHERMAN  
(Nevada State Bar No. 009688)  
701 Bridger, Suite 850  
Las Vegas, Nevada 89101  
Telephone: (702) 471-7432  
Facsimile: (702) 471-7435  
Email: [jshea@sheacarlyon.com](mailto:jshea@sheacarlyon.com)  
[ccarlyon@sheacarlyon.com](mailto:ccarlyon@sheacarlyon.com)  
[ssherman@sheacarlyon.com](mailto:ssherman@sheacarlyon.com)

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:  
USA COMMERCIAL MORTGAGE COMPANY,  
Debtor.

BK-S-06-10725-LBR  
Chapter 11

In re:  
USA CAPITAL REALTY ADVISORS, LLC,  
Debtor.

BK-S-06-10726-LBR  
Chapter 11

In re:  
USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,  
Debtor.

BK-S-06-10727-LBR  
Chapter 11

In re:  
USA CAPITAL FIRST TRUST DEED FUND, LLC,  
Debtor.

BK-S-06-10728-LBR  
Chapter 11

In re:  
USA SECURITIES, LLC,  
Debtor.

BK-S-06-10729-LBR  
Chapter 11

**Affects**

- ☐ All Debtors  
☐ USA Commercial Mortgage Co.  
☐ USA Securities, LLC  
☐ USA Capital Realty Advisors, LLC  
☐ USA Capital Diversified Trust Deed  
☒ USA First Trust Deed Fund, LLC

**STIPULATION AND ORDER FOR FIRST TRUST DEED FUND EQUITY SECURITY  
HOLDERS COMMITTEE TO REPRESENT FIRST TRUST DEED FUND IN  
COMPLAINT FOR "CONDITIONAL REVOCATION OF CONFIRMATION ORDER  
UNDER 11 U.S.C. § 1144 AND RESCISSION OF ASSET PURCHASE AGREEMENT"  
[AFFECTS USA CAPITAL FIRST TRUST DEED FUND]**

USA Capital First Trust Deed Fund, LLC ("FTDF") and The Official Committee of Equity Security Holders of USA Capital Trust Deed Fund, LLC (the "FTDF COMMITTEE") represent and stipulate as follows:

**I. BACKGROUND**

1. USA Commercial Mortgage Company ("USACMC") and FTDF filed petitions for relief under Chapter 11 of the Bankruptcy Code on April 13, 2006. The cases are jointly administered, and both of these debtors and their affiliates are jointly represented by Ray Quinney & Nebeker P.C. and the Schwartz & McPherson Law Firm.

2. On December 7, 2006, the above-captioned debtors and debtor in possession (the "Debtors") held an auction before the Bankruptcy Court for the sale of the FTDF Loan portfolio and certain asserts of USACMC. Compass Partners, LLC ("Compass") was the successful purchaser at the auction (the "Compass Sale"). The sale to Compass was to be approved pursuant to the "Debtor's Third Amended Joint Chapter 11 Plan of Reorganization" (the "Plan").

3. The Court confirmed the Plan following the confirmation hearings held on December 19 and 20, 2006 and entered its order confirming the Plan, including approval of the Compass Sale, on January 8, 2006 (the "Confirmation Order"). The Compass Sale closed on February 16, 2007, and the Effective Date of the Plan occurred on March 12, 2007.

4. On July 7, 2007, Compass USA SPE, LLC, Compass Financial Partners, LLC, a Nevada, a limited liability corporation LLC, and Compass Financial Partners, LLC a Delaware a limited liability corporation, filed their Complaint for "Conditional Revocation of Confirmation Order under 11 U.S.C. § 1144 and Rescission of Asset Purchase Agreement" (the "Compass Action") and named the FTDF, among others, as a defendant.

## II. SCOPE OF REPRESENTATION

5. Through this stipulation, and subject to Court approval, FTDF authorizes the FTDF COMMITTEE to represent the estate of the FTDF in the Compass Action discussed above. There does not appear to be any conflict in these matters which would prevent the FTDF COMMITTEE from representing the estate of FTDF in the Compass Action.

6. Stutman, Treister & Glatt, Professional Corporation ("STUTMAN") and Shea & Carlyon ("S&C") were court-approved counsel for FTDF COMMITTEE in the bankruptcy case and authorized to represent FTDF COMMITTEE post-effective date pursuant to the Plan and applicable Court orders, including the Court's "Order Granting Second Joint Motion for Order for Implementation of Confirmed Plan" entered on March 5, 2007 (the "Second Order"). STUTMAN and S&C will represent FTDF COMMITTEE as the representative of the FTDF estate in the Compass Action, and will continue to represent the FTDF COMMITTEE in all other matters in the bankruptcy case.

## III. COMPENSATION

7. FTDF proposes that STUTMAN and S&C will charge the FTDF COMMITTEE for its services in connection with the Compass Action and be compensated from the FTDF estate, subject to FTDF's right to review and object to such fees and costs in accordance with the Second Order.

## IV. STIPULATED REPRESENTATION PERMITTED

8. Stipulated representation of a debtor's estate by an official committee is permissible under *Liberty Mutual Insurance Company v. Official Unsecured Creditors Committee of Spaulding Composites Co. (In re Spaulding Composites Co.)*, 207 B.R. 899, 904 (9th Cir. BAP 1997), which stated:

This case is somewhat unusual in that the setting for derivative litigation often involves a debtor-in-possession (DIP") who is hostile to proposed litigation. *See e.g., Curry*, 57 B.R. at 828; *Louisiana World Exposition v. Federal Ins. Co.*, 858 F.2d at 247; *In re STN Enterprises*, 779 F.2d at 901. In that setting, the concern is that the DIP is failing to attend to litigation which it should pursue. Here, however, rather than opposing the Committee's suit, Spaulding approved of it, and Liberty argues the converse to the above — that is, Liberty argues that the Committee

1 is fostering estate litigation which should not be pursued. The  
 2 question, then, is whether a DIP may stipulate to  
 3 representation by an unsecured creditors' committee. We hold  
 that it may.

4 See also, *In re Commodore Inter. Ltd.*, 262 F.3d 96, 99-100 (2nd Cir. 2001); *In re Walnut*  
 5 *Leasing Co.*, 1999 WL 72967 (E.D. Pa. 1999). FTDF also relies on Bankruptcy Code  
 6 § 1103(c)(5), which states: "A committee appointed under section 1102 of this title may perform  
 7 such other services as are in the interest of those represented." 11 U.S.C. § 1103(c)(5). See,  
 8 *Official Committee of Unsecured Creditors of Cybergenics Corp. ex rel. Cybergenics Corp. v.*  
 9 *Chinery*, 330 F.3d 548, 562 (3rd Cir. 2003), *contra*, *In re Fox*, 305 B.R. 912 (10th Cir. BAP

10 2004). The defense of the FTDF by the FTDF COMMITTEE, including the prosecution of a  
 11 motion to dismiss or similar relief will benefit the FTDF estate and the equity security holders  
 12 represented by the FTDF COMMITTEE.

#### 13 STIPULATION

14 FTDF stipulates that its estate be represented by FTDF COMMITTEE in the  
 15 Compass Action.

16 RAY QUINNEY & NEBEKER P.C.  
 17 ANNETTE JARVIS  
 STEVEN C. STRONG

18 And

19 SCHWARTZER & MCPHERSON LAW FIRM  
 20 LENARD E. SCHWARTZER  
 21 JEANETTE E. MCPHERSON

22 /s/ Steven C. Strong  
 STEVEN C. STRONG  
 23 38 South State Street  
 Suite 1400  
 24 Salt Lake City Utah, 84111  
 25 Counsel for USA Capital First Trust  
 Deed Fund, LLC

1 STUTMAN, TREISTER & GLATT, P.C.

2 /s/ Eve H. Karasik

3 EVE H. KARASIK

4 CHRISTINE M. PAJAK

5 1901 Avenue of the Stars, 12<sup>th</sup> Floor

6 Los Angeles, CA 90067

7 Counsel for the Official Committee of Equity

8 Security Holders of USA Capital First Trust Deed,  
9 Fund, LLC

10 OFFICE OF THE UNITED STATES TRUSTEE

11 August B. Landis, Esq.

12 Assistant United States Trustee

13 **ORDER**

14 IT IS SO ORDERED.

15 ###  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 STUTMAN, TREISTER & GLATT, P.C.

2  
3 EVE H. KARASIK  
4 CHRISTINE M. PAJAK  
5 1901 Avenue of the Stars, 12<sup>th</sup> Floor  
6 Los Angeles, CA 90067  
7 Counsel for the Official Committee of Equity  
8 Security Holders of USA Capital First Trust Deed,  
9 Fund, LLC

10 REVIEWED:  
11 OFFICE OF THE UNITED STATES TRUSTEE

12   
13 August B. Landis, Esq.  
14 Assistant United States Trustee

15 **ORDER**

16 IT IS SO ORDERED.

17 ###